

Residential Tenancies Tribunal

Application 2024-0350-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 30-May-2024 at 9:16 am.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, was represented at the hearing by [REDACTED], who attended via teleconference.
3. The respondent, [REDACTED], did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach them by telephone at the start of the hearing. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the Rules of the Supreme Court, 1986. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as they have been properly served. The landlord submitted an affidavit (LL#1) with their application stating that they had served the tenant with notice of the hearing electronically on 29-April-2024. The appropriate supporting documents were also provided. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issues before the Tribunal

5. Should the landlord's claim for overdue rent succeed?
6. Should the landlord's application for an order of vacant possession be granted?

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).

8. Also considered and referred to in this decision are sections 18 and 34 of the *Act*, as follows:

Notice of termination of rental agreement

18. (2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises

- (a) not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;
- (b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and
- (c) not less than 3 months before the end of the term where the residential premises is rented for a fixed term.

...

(9) In addition to the requirements under section 34, a notice under this section shall

- (a) be signed by the person providing the notice;
- (b) be given not later than the first day of a rental period;
- (c) state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and
- (d) be served in accordance with section 35.

Requirements for notices

34. A notice under this Act shall

- (a) be in writing in the form prescribed by the minister;
- (b) contain the name and address of the recipient;
- (c) identify the residential premises for which the notice is given; and
- (d) state the section of this Act under which the notice is given.

Issue 1: Unpaid Rent

- 9. The landlord testified that the tenant owes \$1858 in rent, and a rental ledger (LL#2) was provided in support of this. I accept the landlord's uncontradicted sworn testimony.
- 10. The \$1858 total includes the entire \$800 rent due for the month of May. This tribunal does not deal in future rent and can therefore only award rent up to the date of the hearing. A daily rate must be calculated.

11. The correct formula for determining a daily rate is found by multiplying the monthly rent by the 12 months of the year and divided by the 366 days of this year. In this case that would be $\$800/\text{month} \times (12 \text{ months}/366 \text{ days}) = \sim \$26.23/\text{day}$. Rent for the first 30 days of May therefore equals \$786.89.
12. The total amount of rent due to date is therefore \$1844.89.
13. The tenant shall continue pay rent at the daily rate of \$26.23/day until the date they vacate the premises.

Issue 2: Vacant Possession

14. In order to receive an order for vacant possession, a landlord must have issued a valid termination notice. To be valid, a termination notice must comply with all relevant sections of the *Act*. The landlord submitted a termination notice (LL#3) they had issued on the tenant.
15. LL#3 is in writing but not in the form prescribed by the minister. However, s. 22(f) of the *Interpretation Act*, RSNL 1990, states that where a form is prescribed, deviations from the form not affecting the substance nor calculated to mislead, do not invalidate the form used. It contains the name and the address of the recipient. It identifies itself as being under s. 18 of the *Act*. The deviation from the form does not affect the substance of the contents nor do I have reason to believe it was calculated to mislead. It therefore complies with s. 34 of the *Act*.
16. LL#3 was signed by the representative of the landlord who provided it. It states the date on which the rental agreement terminates and the tenant is required to vacate the premises as 31-March-2024, the last day of a rental period. It was served on the tenant electronically in accordance with s. 35(2)(f) of the *Act*. It was issued on 7-December-2023, 24 days before the first day of the relevant rental period. It therefore complies with s. 18(9) of the *Act*.
17. The landlord testified that this was a month-to-month lease. LL#2 provides three full months' notice, as required under s. 18(2)(b).
18. The termination notice complies with all relevant sections of the *Act* and is therefore valid. The tenancy terminated on 31-March-2023.
19. Insofar as the tenant is still residing at the premises, they are doing so illegally.

Decision

20. The termination notice is valid. An order of vacant possession will be granted.
21. The tenant shall pay to the landlord \$1844.89 in unpaid rent.
22. The tenant shall continue pay rent at the daily rate of \$26.23/day until the date they vacate the premises.

Summary of Decision

23. The tenant shall vacate the premises immediately.
24. The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sherriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession.
25. The landlord is granted an order of possession.
26. The tenant shall pay to the landlord \$1844.89 in unpaid rent.
27. The tenant shall continue to pay rent at the daily rate of \$26.23/day for each day after 30-May-2024 until they vacate the premises.

12-July-2024

Date



Seren Cahill
Residential Tenancies Office